



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 64

[Docket No. USCG-2012-0054]

RIN 1625-AC11

Waiver for Marking Sunken Vessels with a Light at Night

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising its regulations to implement section 301 of the Coast Guard and Maritime Transportation Act of 2004. This Act authorized the Commandant to waive the statutory requirement to mark sunken vessels with a light at night if the Commandant determines that placing a light would be impractical and waiving the requirement would not create an undue hazard to navigation. The Commandant has delegated to the Coast Guard District Commander in whose district the sunken vessel is located the authority to grant this waiver.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket number USCG-2012-0054 and are available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room

W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket online by going to <http://www.regulations.gov> and following the instructions on that Web site.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LT Patrick N. Armstrong, Coast Guard; telephone 202-372-1561, e-mail Patrick.N.Armstrong@uscg.mil. If you have questions on viewing or submitting material to the docket, call Ms. Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

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I. Abbreviations

BLS	Bureau of Labor Statistics
CFR	Code of Federal Regulations
COTP	Captain of the Port

E.O.	Executive Order
MISLE	Marine Information for Safety and Law Enforcement
NAICS	North American Industry Classification System
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section symbol
U.S.C.	United States Code
USCG	United States Coast Guard

II. Regulatory History

The Coast Guard published a notice of proposed rulemaking (NPRM) on May 28, 2013 (78 FR 31872). We note that the NPRM was published with an incorrect Regulatory Identification Number of 1625-AA97, and so we published a correcting notice on September 10, 2013 (78 FR 55230). We received no comments on the proposed rule, no public meeting was requested, and none was held.

III. Background

The Coast Guard is revising its regulations in Title 33 of the Code of Federal Regulations (CFR) part 64, which prescribe rules relating to the marking of structures, sunken vessels, and other obstructions for the protection of maritime navigation. These regulations apply to all sunken vessels in the navigable waters or waters above the continental shelf of the United States. The current regulations in 33 CFR 64 require an owner of a vessel, raft, or other craft that is wrecked and sunk in a navigable channel to immediately mark it with a buoy or a beacon during the day and a light at night, and maintain the markings until the wreck is removed. The current wording uses the phrase “buoy or daymark,” which we are replacing with “buoy or beacon” in this part. This is a more precise phrase encompassing floating and fixed aids to navigation. There are no provisions for exemptions to this regulation. However, the Commandant is authorized by

statute to grant a waiver from the lighting requirement if the Coast Guard determines, due to conditions of the waterway, that marking the sunken vessel with a light is impracticable and that not marking the sunken vessel does not pose an undue hazard to navigation. Such a waiver could save owners the cost of marking sunken vessels with a light without jeopardizing navigational safety.

The potential for saving owners money where there is little risk to navigation safety is the primary purpose of this rule. This final rule adds to the regulations a provision in section 301 of the Coast Guard and Maritime Transportation Act of 2004 (“the Act”) (Pub. L. 108-293), codified at 33 U.S.C. 409, that authorizes the Commandant to waive the requirement to mark a sunken vessel, raft, or other craft with a light at night if the Commandant determines it would be “impracticable and granting such a waiver would not create an undue hazard to navigation.” The Commandant has delegated to the District Commander the authority to grant this waiver. (See Aids to Navigation Manual-Administration (COMDTINST M16500.7A)).

In addition, the Coast Guard is making the editorial and organizational changes to 33 CFR part 64 subpart B addressed in the NPRM to make the regulations clearer to the regulated industry.

IV. Discussion of Comments and Changes

Because the Coast Guard received no comments on the proposed rule, we are publishing this final rule with no changes from the May 28, 2013 NPRM.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes or E.O.s.

A. Regulatory Planning and Review.

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule is not a significant regulatory action under section 3(f) of E.O. 12866, as supplemented by E.O. 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866. The Office of Management and Budget (OMB) has not reviewed it under E.O. 12866. Nonetheless, we developed an analysis of the costs and benefits of the rule to ascertain its probable impacts on industry.

The Coast Guard did not receive any comments related to the proposed rule or regulatory assessment during the public comment period. We received no additional information or data that would alter our assessments in the NPRM. Therefore, we are adopting the regulatory assessment for the NPRM as final. The following summarizes the costs and benefits as presented in the NPRM regulatory assessment:

Summary of costs and benefits

Category	Proposed rule
Applicability	Owner/operator of a vessel sunk in navigable channels

	that request a waiver from the requirement to provide a lighted marker if providing an unlighted marker does not create a hazard to navigation
Affected population	6 sunken vessels per year
Industry annualized costs (7% discount rate)	\$217 per year
Government annualized costs (7% discount rate)	\$1,140 per year
Total annualized cost of the rule (7% discount)	\$1,357 per year
Benefits	Cost savings due to waiver of requirement that the marker have a light. Improved clarity and readability for existing information requirements

The Coast Guard is revising its regulations requiring the owner of a sunken vessel to mark the vessel with a light at night. Existing regulations require an owner of a vessel, raft, or other craft that is wrecked and sunk in a navigable channel to immediately mark it with a buoy or a beacon during the day and with a light at night, and maintain the markings until the sunken vessel is removed.

The revision to the regulations codifies a provision in the Coast Guard and Maritime Transportation Act of 2004 that authorizes the Commandant of the Coast Guard, under certain circumstances, to waive the requirement to mark sunken vessels with a light at night. This new regulatory language permits a waiver to be granted if the District Commander determines the placement of a light would be impractical and granting a waiver will not create an undue hazard to navigation. This final rule also makes certain edits in order to improve readability and clarify existing information requirements.

Costs associated with the rule result from vessel owners/operators requesting waivers from marking a sunken vessel. We estimate that six vessel owners and/or operators per year would request waivers from a District Commander. It is estimated that it would take an owner or operator approximately 15 minutes to report the incident to the Coast Guard, via voice communication, and informally request a waiver for their marker. The loaded hourly wage rate of a Captain, Mate, and Pilot of a Water Vessel (NAICS 53-5021) is \$48.30.¹ Therefore, the estimated cost of the initial reporting, per incident, is $\$12.07 = (\$48.30 \times .25)$. We also estimate that it would take approximately 30 minutes, per waiver, to write up and submit a formal request to the District Commander. Therefore, the cost of submitting a request is $\$24.15 = (\$48.30 \times .5)$, and the total cost for each occurrence is $\$36.22 = (\$12.07 + \$24.15)$. The total 10-year cost of six affected vessels is \$1,526 discounted at 7 percent and an annualized cost of \$217.32 discounted at 7 percent.

The Federal Government will also incur costs to review and grant waivers. We anticipate a Coast Guard Commander (O-5) will review the waiver request and make the determination of whether to grant it. As previously stated, it is projected that six waiver requests per year would be submitted for review. We estimate that each waiver review would take approximately 2 hours. Therefore, the Government's economic burden of reviewing a written waiver request is \$190 ($\95.00 at an O-5 wage rate² \times 2 hours) per waiver, and an estimated annual burden of \$1,140 per year ($\190 per waiver \times 6 waivers). The total Government 10-year cost is \$8,007, and the annualized cost is \$1,140, both

¹ See the Bureau of Labor Statistics' (BLS) Web site at <http://www.bls.gov/oes/2011/may/oes535021.htm> , Mean hourly wage for Captains, Mates and Pilots of Water Vessels. In addition, the cost reported in the analysis is based on the loaded wage rate, which is the reported BLS wage rate multiplied by the load rate of 1.4.

² Wage rate for an O-5 comes from COMDTINST 7310.1M. Feb 2011.

discounted at 7 percent. The total 10-year (industry and government) cost of this rule is estimated at \$13,573.20 (undiscounted) and \$9,533.25 discounted at 7 percent.

The primary benefit of this final rule is that it provides a regulatory efficiency benefit. Currently, ship operators may not be aware that waivers from the lighting requirement may be requested. By establishing a waiver provision as part of the Coast Guard regulations, we anticipate a wider audience would have knowledge about petitioning the Coast Guard for a waiver. Additionally, we believe that the clarifications to the regulations could improve the efficiency of data collection of sunken vessels by explaining the information required (such as specifying that vessel type and size should be included in the description of a sunken vessel).

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of fewer than 50,000 people. The Coast Guard received no comments related to its discussion and analysis of impacts on small entities during the public comment period. We received no additional information or data that would alter our discussion and analysis in the NPRM.

The Coast Guard expects that this rule could impact a maximum of six small entities per year at a cost of \$36 per waiver per entity, which we assume would have a cost impact of less than 1 percent of annual revenue per affected entity.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

D. Collection of Information

As noted previously, we estimate that there would be fewer than 10 respondents affected in any given year. Therefore, this rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), since the estimated number of respondents is less than the threshold of 10 respondents per 12-month period for collection of information reporting purposes under the Paperwork Reduction Act.

E. Federalism

A rule has implications for federalism under E.O. 13132 (“Federalism”) if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that E.O. and have determined that it does not have implications for federalism. This rule would merely permit owners and operators of vessels sunk in navigable channels to request a waiver from the existing Coast Guard requirement to mark the sunken vessel with a light at night.

It is well-settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well-settled that the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel’s obligations, are within fields foreclosed from regulation by the States or local governments. (See the decision of the Supreme Court in the consolidated cases of United States v. Locke and Intertanko v. Locke, 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000)). The Coast Guard believes the Federalism principles articulated in Locke apply to this rule since it would only affect an area regulated exclusively by the Coast Guard.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule would not cause a taking of private property or otherwise have taking implications under E.O. 12630 (“Governmental Actions and Interference with Constitutionally Protected Property Rights”).

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988 (“Civil Justice Reform”), to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under E.O. 13045 (“Protection of Children from Environmental Health Risks and Safety Risks”). This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under E.O. 13175 (“Consultation and Coordination with Indian Tribal Governments”), because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this rule under E.O. 13211 (“Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use”). We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under E.O. 12866, as supplemented by E.O. 13563, and is not likely to

have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions, which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2-1, paragraph (34)(a), (b) and (i) of the Instruction. This rule involves regulations which are editorial, regulations delegating authority and regulations in aid of vessel traffic services, and marking of

navigation systems. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 64

Navigation (water), Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 64 as follows:

PART 64—MARKING OF STRUCTURES, SUNKEN VESSELS AND OTHER OBSTRUCTIONS

1. The authority citation for part 64 continues to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 409, 1231; 42 U.S.C. 9118; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 64.11 to read as follows:

§ 64.11 Marking, notification, and approval requirements.

(a) The owner and/or operator of a vessel, raft, or other craft wrecked and sunk in a navigable channel must mark it immediately with a buoy or beacon during the day and with a light at night. The requirement to mark the vessel, raft, or other craft with a light at night may be waived by the District Commander pursuant to § 64.13 of this subpart.

(b) The owner and/or operator of a sunken vessel, raft, or other craft that constitutes a hazard to navigation must mark it in accordance with this subchapter.

(c) The owner and/or operator of a sunken vessel, raft, or other craft must promptly report to the District Commander, in whose jurisdiction the vessel, raft, or other craft is located, the action they are taking to mark it. In addition to the information required by 46 CFR 4.05, the reported information must contain—

(1) Name and description of the sunken vessel, raft, or other craft, including type and size;

(2) Accurate description of the location of the sunken vessel, raft, or other craft, including how the position was determined;

(3) Water depth; and

(4) Location and type of marking established, including color and shape of buoy or other beacon and characteristic of the light, if fitted.

(d) The owner and/or operator of a vessel, raft, or other craft wrecked and sunk in waters subject to the jurisdiction of the United States or sunk on the high seas, if the owner is subject to the jurisdiction of the United States, must promptly report to the District Commander, in whose jurisdiction the obstruction is located, the action they are taking to mark it in accordance with this subchapter. The reported information must contain the information listed in paragraph (c) of this section, including the information required by 46 CFR 4.05.

(e) Owners and/or operators of other obstructions may report the existence of such obstructions and mark them in the same manner as prescribed for sunken vessels.

(f) Owners and/or operators of marine pipelines that are determined to be hazards to navigation must report and mark the hazardous portion of those pipelines in accordance with 49 CFR parts 192 or 195, as applicable.

(g) All markings of sunken vessels, rafts, or crafts and other obstructions established in accordance with this section must be reported to and approved by the appropriate District Commander.

(h) Should the District Commander determine that these markings are inconsistent with part 62 of this subchapter, the markings must be replaced as soon as practicable with approved markings.

3. Revise § 64.13 to read as follows:

§ 64.13 Approval for waiver of markings.

(a) Owners and/or operators of sunken vessels, rafts or other craft sunk in navigable waters may apply to the District Commander, in whose jurisdiction the vessel, raft, or other craft is located, for a waiver of the requirement to mark them with a light at night as required under § 64.11(a) of this subpart. Information on how to contact the District Commander is available at <http://www.uscg.mil/top/units>.

(b) The District Commander may grant a waiver if it is determined that—

(1) Marking the wrecked vessel, raft or other craft with a light at night would be impractical, and

(2) The granting of such a waiver would not create an undue hazard to navigation.

Dated: December 12, 2013

Gary C. Rasicot
U.S. Coast Guard
Director, Marine Transportation Systems

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